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STATE OF WASHINGTON
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NO. 97008-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,


v.

STEVEN NICOLAS RUSSELL,
ALEJANDRO RAMIREZ and
DANIEL GALEANA RAMIREZ,

Appellants.

**ANSWER TO GALEANA AND RAMIREZ'
PETITION FOR DISCRETIONARY REVIEW**

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A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent.

B. COURT OF APPEALS DECISION

Petitioner Daniel Galeana Ramirez (hereinafter Galeana)¹ and Alejandro Ramirez petition this Court to review the published in-part opinion in *State v. Ramirez*, 432 P.3d 454 (2019).

In the trial court, as in the Court of Appeals, Galeana and Ramirez' case was joined with Steven Russell's. The Court of Appeals' decision affirmed the convictions of all three men.

Russell has also filed a Petition for Discretionary Review, which was received in February. The State answered that Petition separately, as it had been substantively completed by the time Galeana and Ramirez' Petitions were received.

C. ISSUES PRESENTED FOR REVIEW

Both Petitioners ask this Court to review the Court of Appeals' decision that their confrontation rights were not implicated by the

¹ The Petitioner's name appears to follow traditional Spanish-language naming conventions wherein the first last name (the patronymic) is the proper formal surname and the second last name (the matronymic) is only used in cases where a middle name would also be utilized.

admission of cell phone data from Russell's phone without the cell phone examiner who extracted the data, because that person was not a "witness against" them.

The State opposes review because the Court of Appeals correctly decided that the person who extracted the data was not a "witness against" the Petitioners for confrontation clause purposes. However, if this Court does accept review, the State seeks cross-appeal of the decision that the cell phone examiner was a "witness" (as opposed to a "witness against,") as the examiner made no statements whatsoever that were admitted into evidence.

Ramirez also seeks review of three additional issues that the Court of Appeals rejected: that the evidence of a weapon was insufficient during the robbery and assault; that his case was improperly joined to Russell and Galeana's, and that his double jeopardy rights were violated because the trial court punished him separately for beating the victims after robbing them.

For all these issues, Ramirez brings no conflict of opinion or significant issue of law. Instead, he attempts to reargue the facts of the case, facts that were already considered by the trial court and the Court of Appeals. For these reasons, this Court should deny the Petitions.

D. STATEMENT OF THE CASE

This case arises from two incidents that occurred in a three hour period in the late evening of October 24, 2015, into the early morning hours of October 25, 2015. Both incidents involved the same victims, Jose Leiva Aldana and Agustin Morales Gamez.² The first incident, which also involved Ramirez, is substantively laid out in the Answer to Russell's Petition for Discretionary Review and incorporated herein by reference.

Officer Monte Glaser responded to the scene where Mr. Morales and Mr. Leiva were accosted, arriving at about 11:40 PM. RP 7/1/2016 at 213. Officer Glaser was able to communicate with the two men in rudimentary Spanish and gestures. RP 7/1/2016 at 215. Officer Glaser took the two victims to the police department where he spoke to them by means of a "language line" interpreter. RP 7/1/2016 at 215-16. This process took until 2:00 AM. RP 7/1/2016 at 221.

Meanwhile, Detective Jason Perkinson of the Aberdeen Police was working as a security guard at Grays Harbor Community Hospital. RP 6/30/2016 at 158. At midnight, he saw Petitioners Russell and Ramirez

² Agustin Morales Gamez will be referred to as Mr. Morales and Jose Leiva Aldana will be referred to as Mr. Leiva.

come into the emergency room. RP 6/30/2016 at 159-60 & 169. The police had responded to the initial assault and robbery only twenty minutes earlier. RP 7/1/2016 at 213.

Detective Perkinson later learned that Ramirez had a stab wound near his rib cage. RP 6/30/2016 at 163. Stabbings are uncommon at the hospital. RP 6/30/20016 at 162. Detective Perkinson later reviewed security footage and saw that Ramirez had been wearing a black sweatshirt or jacket when he came in. RP 6/30/2016 at 167. Ramirez had taken off the sweatshirt or jacket, but took it with him into the emergency room. RP 6/30/2016 at 168.

When a nurse took Ramirez to another area of the emergency department, Russell left. RP 6/30/2016 at 168. Shortly afterwards, Russell returned to the hospital with Galeana. RP 6/30/2016 at 171. At about 1:00 AM Petitioners Russell and Galeana went into Ramirez' hospital room and closed the glass partition and the curtains. RP 6/30/2016 at 173-74.

At about 1:40 AM Detective Perkinson noticed that Russell and Galeana had left the hospital. RP 6/30/2016 at 175.

Back at the police station, Officer Glaser offered Mr. Leiva and Mr. Morales a ride home, but they preferred to walk. RP 7/1/2016 at 221.

The next time Officer Glaser saw the two men was at an apartment building when he responded to reports of a shooting. RP 7/1/2016 at 224.

The call came in at about 2:40 AM; the men had left the police station only twenty minutes earlier. RP 7/1/2016 at 229. Mr. Leiva had a through-and-through gunshot wound to his abdomen and Mr. Morales had an injury to his foot. RP 7/1/2016 at 228.

At trial, Mr. Morales testified that they left the police station around 2:00 AM. RP 6/29/2016 at 105. He said that “they” were waiting for them and “they” shot Jose.³ RP 6/29/2016 at 106. Mr. Morales said that some shrapnel hit him on the boot. RP 6/29/2016 at 106. He said that the person who shot them was Hispanic. RP 6/29/2016 at 107.

Mr. Leiva testified that as they were coming home “they” were back. RP 6/30/2016 at 100. Mr. Leiva testified that he was shot in the stomach. RP 6/30/2016 at 102. He testified that, at the hospital, he was in pain from his injuries. RP 6/30/2016 at 139. He testified that Daniel Galeana shot him, and that he knows Daniel Galeana’s name because he knows members of Galeana’s family. RP 6/30/2016 at 104.

Detective Perkinson was still working at the hospital when Mr. Morales and Mr. Leiva arrived from the shooting scene. RP 6/30/2016 at

³ Both Mr. Leiva and Mr. Morales testified through an interpreter. See RP 6/29/2016 at 86 and RP 6/30/2016 at 91.

176. Detective Perkinson locked down the hospital because Ramirez was still in the hospital and Detective Perkinson believed that the two incidents were connected. RP 6/30/2016 at 179. He seized a knife from Mr. Morales. RP 6/30/2016 at 179-80. The knife was later turned over to Officer Glaser. RP 7/1/2016 at 231. Detective Cox directed the knife be sent to the Washington State Patrol Crime Lab. RP 7/1/2016 at 389.

Detective Cox of the Aberdeen Police went to the hospital the next morning at 8:30 AM. RP 7/1/2016 at 322. Mr. Leiva was still in a hospital bed. RP 7/1/2016 at 324. Mr. Leiva identified Galeana as the person who had shot him from a photograph. *Id.*

Sergeant Casey Wagonblast also responded to the hospital and seized a black hooded sweatshirt from Defendant Ramirez' hospital room. RP 6/30/2016 at 195. Sgt. Wagonblast noted that the sweatshirt was an extra-large, which seemed awfully large for a man of Ramirez' stature. RP 6/30/2016 at 196. Both witnesses to the robbery and assault said that the smaller of the two assailants was wearing an oversized black hoodie. RP 6/29/2016 at 19-20 & 49. Both witnesses identified Russell as the larger assailant. RP 6/29/2016 at 24-26 & 52-53.

On November 10, 2017, about two weeks after the incidents, Officer Capps of the Aberdeen Police retrieved a .38 special pistol from a

person named Josiah Rhodes. RP 7/1/2017 at 415. Officer Capps was not looking for this revolver. RP 7/6/2016 at 437. Mr. Rhodes requested that Officer Capps take the weapon. RP 7/6/2016 at 436. Officer Capps later cited Rigo Rivera for possessing the firearm in question. *Id.*

When joining all three cases for trial, the trial court speculated about what might happen if someone else's blood was on the knife, saying, "...if there is - blood on the knife was not him, then - then he would have that, well, he was stabbed." RP 1/4/2016 at 20.

A forensic scientist examined the knife and tested a red-brown staining on the blade for blood, but it turned out not to be blood. RP 7/6/2016 at 458. The scientist did some further examination, and was able to extract some DNA from the hinge of the knife (not the blade) but it was not Ramirez'. RP 7/6/2016 at 458-59.

Detective Cox found out about the pistol Officer Capps had seized. RP 7/6/2016 at 493. Detective Cox believed that the firearm used in the shooting of Mr. Leiva and Mr. Morales was a revolver. RP 7/6/2016 at 494. Detective Cox also knew that Rigo Rivera knew Galeana. *Id.* Detective Cox found both Rivera and Galeana's names in Russell's cell phone data, implying the three knew each other. *Id.* Detective Cox had the pistol sent to the Washington State Patrol Crime Lab for analysis,

along with a recovered bullet from the scene of the shooting. RP 7/6/2016 at 494. A Washington State Patrol Crime Lab firearms examiner later matched a bullet recovered from the scene of the shooting to the revolver. RP 7/6/2016 at 480.

As outlined in the Statement of the Case in Russell's Answer, Detective Cox explained at trial how he had linked the phone recovered from the scene to Russell and later to Ramirez. RP 7/1/2016 at 356-88.

E. ARGUMENT

- 1. The cell phone examiner was not a "witness against" the Petitioners because the cell phone data that was admitted contains no statements by that examiner (Galeana's only issue and Ramirez' issue #3.)**

The Petitioners claim that their confrontation rights were violated because the examiner who extracted the data from Russell's cell phone did not testify at trial, but excerpts from data were admitted into evidence. The Petitioners confuse evidentiary foundational requirements for admission of exhibits with the constitutional confrontation right. The excerpts admitted at trial, attached as Appendix A, contain no statements from the examiner. All that was required for admission of the data is authentication pursuant to ER 901. The Petitioners have no right to

confront a person who merely operated a machine that transferred data from one electronic device to another.

The Confrontation Clause applies to “witnesses against,” who are limited to persons who make statements to the court.

The sixth amendment to the U.S. Constitution holds that, “... “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” The analogous provision of the Washington State constitution holds that, “In criminal prosecutions the accused shall have the right... to meet the witnesses against him face to face...” Wa. Const. art. I, § 22. These provisions have been held to be analogous. *State v. Lui*, 179 Wn.2d 457, 470, 315 P.3d 493, 499 (2014). Therefore, herein the State will only refer to the sixth amendment confrontation clause.

The confrontation clause applies to “witnesses against” the accused – that is, those who “bear testimony.” *Crawford v. Washington*, 541 U.S. 36, 51, 124 S. Ct. 1354, 1364, 158 L. Ed. 2d 177 (2004). In other words, “if an out-of-court statement is testimonial in nature, it may not be introduced against the accused at trial[.]”⁴ *Bullcoming v. New Mexico*, 564 U.S. 647, 657, 131 S. Ct. 2705, 2713, 180 L. Ed. 2d 610 (2011).

⁴ Unless the defendant has had a prior opportunity to cross-examine the declarant, and the declarant is unavailable for trial. *Bullcoming* at 657. This exception is not applicable here.

What is “testimonial” was only roughly defined in *Crawford*, and was the subject of a number of cases over the next ten years. In this line of cases the courts were always careful to note that the decision did not reach every link in the chain of custody, or extend to machine-generated data.

In *Melendez-Diaz v. Massachusetts* the U.S. Supreme Court found that “certificates of analysis” prepared and sworn by a crime lab analyst, concluding that a substance contained cocaine, and attesting to the weight of the substance, were “testimonial.” *Melendez-Diaz*, 557 U.S. 305, 311, 129 S. Ct. 2527, 2532, 174 L. Ed. 2d 314 (2009). However, the *Melendez-Diaz* court also held that the confrontation clause does not sweep in persons whose evidence relates to foundational matters, such as the chain of custody or authenticity of the sample. *Id.* at 311 n. 1.

In *Bullcoming v. New Mexico* the U.S. Supreme Court concluded that an unsworn “Report of Blood Alcohol Analysis” was testimonial.⁵ *Bullcoming* at 665. That report included the condition of the seal the blood sample when received, that it was broken in the laboratory, that he had followed certain procedures outlined on the back of the document, and the end result obtained by operation of a gas chromatograph. *Id.* at 653-54. That result was that the Defendant’s blood alcohol level was 0.21,

⁵ In *Bullcoming*, the New Mexico Supreme Court had found that the report was testimonial in nature as well, but ruled it admissible on other grounds.

which fulfilled one of the elements of New Mexico's Aggravated DWI law, the crime for which the defendant had been charged and convicted. *See* N.M. Stat. Ann. § 66-8-102(D)(1). The *Bullcoming* court stated, however, that the confrontation clause applied to “past events and human actions not revealed in raw, machine-produced data...” *Bullcoming* at 660 (and *see Lui* at 479.)

In her concurrence, Justice Sotomayor pointed out the limited holding of the case, noting that, “this is not a case in which the State introduced only machine-generated results, such as a printout from a gas chromatograph. The State here introduced [the analyst]'s statements...” *Id.* at 673 (Sotomayor, J. concurring.)

In *State v. Lui* this Court digested the *Crawford* line of cases and formulated a simple rule: “If the declarant makes a factual statement to the tribunal, then he or she is a witness. If the witness's statements help to identify or inculcate the defendant, then the witness is a ‘witness against’ the defendant.” *Lui* at 481. But again, the opinion was careful to make clear that the holding does not require the testimony of “analysts whose only role is to operate a machine or add a reagent to a mixture.” *Id.* at 480.

The cell phone examiner who extracted the data admitted in this case made no statements.

In this case the cell phone examiner who extracted the data from the cell phone – William Matthews - made no statements. He is neither a “witness against,” a “witness,” or even a “declarant.” He simply performed a mechanical process wherein a computer copied data from a memory chip taken out of a cell phone – data that had been created before the incidents that led to the charges. That data was organized into a document by a computer program. RP 6/30/2016 at 30. Nine pages of that document were admitted into evidence. Copies of all the exhibits are attached as Appendix A.⁶ The State invites this Court to examine them. They contain no statements, much less conclusions, of the cell phone examiner.

The Petitioners characterize the data as a “report”⁷ and claim that the extraction process was a “test” in order to conflate the act of copying preexisting data with forensic analysis. They claim that Detective Cox,

⁶ The entirety of the document produced from the cell phone data was marked as Exhibit #32, but not admitted. RP 6/30/2016 at 68-69. Admitted exhibits were Nos. 42 (Pages 1 & 2, RP 6/30/2016 at 70,) 52 (pages 3-5, PR 7/1/2016 at 357,) 58 (page 251, RP 7/1/2016 at 380,) 64 (page 132, RP 7/1/2016 at 379,) 65 (page 391, RP 7/1/2016 at 377,) and 77 (page 53, RP 7/6/2016 at 495.) The messages in Exhibits nos. 65 and 77 were redacted at the request of the defense as irrelevant and potentially prejudicial as they contained references to gangster rap, drug use, and Russell being on community custody. *See* RP at 365-75.

⁷ To be fair, the document is characterized as a “report” on its cover page, and was called that by the witness who gave the foundational testimony. *See* RP 6/30/2016 at 29.

who used a police database and his knowledge of the case to link the phone to the Petitioners “simply parroted” the conclusions of the cell phone examiner. But the Petitioners never identify where in the record the conclusions of the cell phone examiner are located.

This failure to refer to the record is simply explained: the cell phone examiner drew no conclusions. He merely performed a procedure in which cell phone data was copied off the chip of the phone and turned into a human-readable document by software on a computer, as Joan Runs Through testified. *See* RP 6/30/2016 at 33-42. There is nothing in the record to suggest the examiner knew what crime had occurred, who the suspects were, or that he even looked at the data. The testimony at trial was that cell phone examiners seldom look at the contents of the phones; they leave that to the police. RP 6/30/2016 at 71.

The conclusions that Detective Cox testified to were his own, based upon the raw data from the phone and his knowledge of the Petitioners. Detective Cox knew Russell’s date of birth was March 4, 1989, which led to the conclusion the user names “snrussell030489” and “snrussell89,” both found in the phone, were Petitioner Steven N. Russell’s. RP 7/1/2016 at 357-58. Detective Cox figured out the contact “Silent” was Ramirez by matching “Silent’s” phone number to Ramirez’

last known phone number in his police database. RP 7/1/2016 at 381-85. Detective Cox also discovered that Ramirez had “Silent” tattooed on his arm. RP 7/1/2016 at 385-86. And Detective Cox found Galeana and Rigo Rivera’s names in the phone data, implying that the person who ended up with the firearm used in the shooting knew the Petitioners. RP 7/6/2016 at 495-96. There is no evidence that the cell phone examiner, who was in Utah and possessed the phone for about twenty-four hours, knew any of this information.

The conclusion is that Detective Cox was the “witness against” the Petitioners, because he was the witness who turned the data into inculpatory evidence, and explained to the jury how he did it. As the Court of Appeals observed, the examiner “merely ran a program that extracted data from the chip.” *State v. Ramirez*, 432 P.3d 454, 459 (Wash. Ct. App. 2019). Such an act does not a witness make, as *Bullcoming*, *Melendez-Diaz* and *Lui* expressly made clear.

Because there are no statements attributable to the nontestifying cell phone examiner, he was not a “witness against” the Petitioners, and their confrontation clause rights were unoffended by his absence. This Court should deny the Petitions for Review.

If this Court does accept review, it should decide that the cell phone technician was not a “witness” at all, because he made no statements to the trial court.

In *Lui* this court ruled that a doctor who took a corpse’s temperature, which was later used to help form an expert opinion at trial, was a “witness,” but not a “witness against,” because the temperature was factual information created for use by the court. *Lui* at 493. Relying upon that holding, the Court of Appeals in this case held that the cell phone examiner was a “witness” but not a “witness against” the Petitioners.

If this Court does accept review, it should correct this point. The cell phone examiner did not create any information. The cell phone data existed before the phone was ever sent to him. The cell phone examiner merely performed a mechanical process. He was a link in the chain of custody, but this does not make him a witness. If the Petition is accepted, the State asks this Court to correct this issue.

2. There was evidence of a firearm or other deadly weapon during the robbery and assault, so Ramirez’ right to a unanimous jury verdict was not violated (Ramirez’ issue #1.)

The jury was instructed that they could convict Ramirez of the charges of Robbery in the First Degree and Attempted Robbery in the First Degree if they found that Ramirez either a) displayed what appeared to be a firearm or other deadly weapon; or b) inflicted bodily injury. CP at 78-

79. The jury returned general guilty verdicts to both counts. CP at 93, 95. Because the victims were obviously injured, Ramirez claims that a lack of evidence of a display of what appeared to be a firearm or other deadly weapon means that his right to a unanimous jury verdict might have been violated. However, there was evidence to support the alternative means, as the Court of Appeals found.

Alternate means crimes and sufficiency of the evidence.

Criminal defendants in Washington “have no right to unanimity as to means so long as all means alleged are (1) supported by sufficient evidence and [are] (2) ‘not repugnant’ to one another.” *State v. Woodlyn*, 188 Wn.2d 157, 164, 392 P.3d 1062, 1066 (2017) (citing *State v. Arndt*, 87 Wn.2d 374, 378-79, 553 P.2d 1328 (1976).) “A general verdict satisfies due process only so long as each alternative means is supported by sufficient evidence.” *Id.* at 165. “The evidence is sufficient if ‘after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt.’” *State v. Armstrong*, 188 Wn.2d 333, 341, 394 P.3d 373, 377 (2017) (quoting *Ortega-Martinez*, 124 Wn.2d 702, 881 P.2d 231 (1994).)

An insufficiency claim “admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn. 2d 192, 201, 829 P.2d 1068, 1074 (1992) (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980).)

There was evidence of a firearm or other deadly weapon.

Nicole Smith, one of the witnesses to the assault, testified that Mr. Leiva and Mr. Morales were saying “pistol” immediately after the attack. RP 6/29/2016 at 20. At trial, Mr. Morales said that he was hit in the head with “something that was metal.” RP 6/29/2016 at 93. Mr. Leiva said that the assailants had “something black, like a weapon.” RP 6/30/2016 at 95. When asked if the assailants hit him with a knife or a gun, Mr. Leiva said it was “a[n] arm.” RP 6/30/2016 at 95-96. During cross-examination, Mr. Leiva again said the black object in the hands of the assailants was “an arm.” When asked about seeing a gun, Mr. Leiva said, “Yes. I saw like a weapon, like an arm in his hand and I assumed it was a - an arm.” RP 6/30/2016 at 149. Later, Mr. Leiva said he saw a gun in the hands of the attackers. RP 6/30/2016 at 145-46.

Both Mr. Morales and Mr. Leiva testified through an interpreter,⁸ so “arm” is a translation. Having an arm in one’s hand makes no sense, so it more likely, given the other testimony about a pistol and something metal, that Mr. Leiva meant that the assailants were *armed*.

Because all inferences are construed in the State’s favor, the Court of Appeals found that this evidence was sufficient to support the alternate means of displaying what appeared to be a firearm or other deadly weapon.

Ramirez claims the Court of Appeals’ decision “conflicts” with *State v. Bratz*, 101 Wn. App. 662, P.3d 759 (2000) and *State v. DeRyke*, 149 Wn.2d 906, 73 P.3d 1000 (2003). But *Bratz* announces no rule for when evidence is considered sufficient, and *DeRyke* appears to be about definitions in jury instructions.

In *Bratz* the Defendant was found not guilty by reason of insanity of robbery after claiming he had nitroglycerin in his coat. *Bratz* at 664-65. No nitroglycerin was recovered when he was arrested. *Id.* at 665. *Bratz*

⁸ There were obvious language and cultural barriers throughout the testimony of Mr. Leiva and Mr. Morales. Mr. Morales used slang words that the court’s interpreter could not identify, such as “*putazo*.” RP 6/29/2016 at 102-05. Great time was given to the meaning of the word “*guero*.” See RP 6/29/2016 at 118-19 and RP 7/6/2016 at 539-40. An interpreter who had translated for the men before trial testified that their vocabulary was very limited and that she frequently had to rephrase questions so that they would understand. RP 7/6/2016 at 538. She also testified that “*guero*” could mean “white” “non-chicano” or even “blond.”

filed a Personal Restraint Petition arguing that simply claiming to have nitroglycerin, without more, was not a “display” of a deadly weapon, and the Court of Appeals agreed. *Id* at 674.

Bratz is inapplicable here. *Bratz* simply stands for the unremarkable proposition that a robber must do more than claim to have a weapon to “display” it.

Ramirez also claims the Court of Appeals’ decision runs afoul of *State v. DeRyke*, 149 Wn.2d 906, 73 P.3d 1000 (2003). That case appears to be inapposite. *DeRyke* involved jury instructions that omitted the elements of first degree rape when the defendant was charged with *attempted* first degree rape and failed to specify the degree of rape allegedly attempted. *DeRyke* at 910. There is no mention of alternative means crimes or sufficiency of the evidence in *DeRyke*. How the Court of Appeals’ decision conflicts is lost upon the State.

Conclusion.

Because this claim involves the sufficiency of the evidence, a claim already rejected by the courts below, and no substantive issue of law, this court should refuse Ramirez’ Petition.

3. Ramirez received a fair trial because his case was properly joined to Russell and Galeana's (Ramirez' issue #2.)

Petitioner Ramirez next asks that this Court review the trial court's decision to join his case, and subsequent denial of his motions to sever his case, from Russell and Galeana's. He claims there was a disparity in the weight of the evidence between his case and his co-defendants', despite both the trial court and the Court of Appeals' rulings that the evidence against Ramirez was strong.

What Ramirez is really arguing is that co-defendants cannot be joined if one is identified by an eyewitness, but the other is subsequently identified through investigation. No case stands for this proposition. Again, Ramirez is attempting to reargue the facts of the case without any substantive question of law.

Separate trials are disfavored.

Separate trials are disfavored in Washington, so joinder of the same series of events is presumptively proper. *State v. Asaeli*, 150 Wn. App 543, 583, 208 P.3d 1136 (2009) (citing *State v. Dent*, 123 Wn.2d 467, 484, 869 P.2d 392 (1994).) Denial of a motion to sever is reviewed for an abuse of discretion. *State v. Asaeli*, 150 Wn. App. 543, 583, 208 P.3d 1136, 1159 (2009) (citing *State v. Lane*, 56 Wn.App. 286, 298, 786 P.2d 277 (1989).) When a defendant makes a motion to sever, he has the

burden to demonstrate that a joint trial would be so manifestly prejudicial as to outweigh the concern for judicial economy. *Id.* (citing *State v. Hoffman*, 116 Wn.2d 51, 74, 804 P.2d 577 (1991).) A defendant must show specific prejudice to support a claim that the trial court abused its discretion in denying a severance motion. *Id.* (citing *State v. Wood*, 94 Wn.App. 636, 641, 972 P.2d 552 (1999).)

Ramirez has failed to show manifest, specific prejudice.

The evidence against Ramirez was circumstantial, but strong.

As the Court of Appeals wrote,

[T]here was strong circumstantial evidence of Ramirez's involvement in the initial assaults. Specifically, (1) the assailant's clothing and Ramirez's clothing when he arrived at the hospital were similar, (2) the assailant was stabbed during the altercation and Ramirez arrived at the hospital with a stab wound immediately following the first incident, (3) Russell, who was directly identified as having been involved in the first incident, accompanied Ramirez to the hospital, and (4) Galeana Ramirez, who was directly identified as having been involved in the second incident, visited Ramirez immediately before the second incident.

State v. Ramirez, 432 P.3d 454, 459 (Wash. Ct. App. 2019). Add to this the data retrieved from Russell's cell phone, which showed that Russell had invited Ramirez ("Silent") out for a beer a few hours before the

robbery and assault of Mr. Morales and Mr. Leiva. *See* RP 7/1/2016 at 388. This placed Russell and Ramirez together both before *and* after the first incident, strengthening the implication that Ramirez was the second, smaller assailant in the oversize black hoodie.

Ramirez contends that, because there were eyewitnesses who identified Galeana and Russell, there was a great disparity of the weight of the evidence between he and his co-defendants. This is not necessarily the case. It is a long-standing principle of Washington law that the law makes no distinction between direct and circumstantial evidence; “[s]ometimes direct evidence is more probative or reliable, but many times circumstantial evidence may be more probative or reliable.” *State v. Gosby*, 85 Wn.2d 758, 766, 539 P.2d 680, 685 (1975).

In this case, there was much circumstantial evidence that Ramirez was the second assailant in the alley. In fact, eyewitnesses identified a piece of clothing Ramirez was wearing. There was no disparity of the weight of the evidence, only the type. The court did not err, and because this is largely a factual question, this court should decline Ramirez’
Petition.

The trial court's prospective comments about future evidence did not create a reason to sever.

Ramirez places great weight on the trial court's speculative statements, made at the time of joinder, about how future evidence developments might later affect a motion to sever. But because the knife in question turned out to have little evidentiary value at all, and the cell phone data had not yet been extracted, these statements are not the proof of error Ramirez claims they are.

Detective Perkinson seized a knife from Mr. Morales of the shooting victims when they arrived at the hospital. RP 6/30/2016 at 179-80. The knife was turned over to Officer Glaser. RP 7/1/2016 at 231-32. Detective Cox directed the knife be sent to the Washington State Patrol Crime Lab. RP 7/1/2016 at 389.

When joining all three cases for trial, the trial court speculated about what might happen if someone else's blood was on the knife, saying, "...if there is - blood on the knife was not him, then - then he would have that, well, he was stabbed." RP 1/4/2016 at 20.

A forensic scientist examined the knife and tested a red-brown staining on the blade for blood. RP 7/6/2016 at 458. It turned out that there was no blood on the blade. *Id.* Not finding any DNA on the blade, the scientist did some further examination, and was able to extract some

DNA from the hinge area of the knife, but it was not Ramirez'. RP 7/6/2016 at 458-59.

Obviously, if there had been blood on the knife blade that was not Ramirez', this would have been the "powerful exculpatory evidence" that the trial court meant. However, the knife turned out to be an evidentiary dead end and of little value, if any.

What the trial court and the parties did not know at the time the cases were joined is that the cell phone data would show that Russell had arraigned to meet Ramirez shortly before the incident. *See* RP 7/1/2016 at 388. The Order joining the cases for trial was signed in January. RP 1/4/2016 at 23. The phone data was received by the Aberdeen police on February 9, 2016. RP 7/1/2016 at 355. The evidentiary developments cut both ways, but the trial court's statements were no promise of severance.

Even though the knife turned out to be of little evidentiary value, the case against Ramirez remained strong. The trial court made that determination when denying Ramirez' motion for arrest of judgment. RP 7/29/2016 at 4-6. The Court of Appeals called the case against Ramirez "strong circumstantial" and found that "the evidence of Ramirez's involvement in the first incident was not significantly weaker than the evidence of Russell's involvement..." *Ramirez* at 459.

Because Ramirez is simply asking to reargue facts, and brings no significant questions of law, his Petition ought to be denied.

4. Double jeopardy was not offended by Ramirez' convictions for assault and robbery because the battery had separate purpose and did not elevate the robbery (Ramirez' issue #4.)

Finally, Ramirez once again claims that his convictions for Robbery and Assault in the Fourth Degree should have merged. But robbery and assault do not always merge. In this case the assault had a separate purpose, as the trial court noted during sentencing, because Russell and Ramirez beat on Mr. Morales and Mr. Leiva after they failed to take anything from Mr. Leiva. Further, robbery requires a use of force, not a battery. And the fourth degree assault did not require the bodily injury that was one of the alternative means that elevated the robbery to a first degree robbery. That the charges did not merge is consistent with established law.

Assault and robbery do not always merge.

Ramirez was charged, and convicted, of Robbery in the First Degree and Attempted Robbery in the First Degree, as well as two counts of Assault in the Fourth Degree. CP at 111. All four charges stem from the incident in the alley behind the Aberdeen Fire Department.

Assault and robbery often, but do not necessarily, merge. In *State v. Freeman* this Court considered two cases where the defendants were charged with Robbery in the First Degree and felony assaults. *State v. Freeman*, 153 Wn.2d 765, 768, 108 P.3d 753, 755 (2005). This Court ruled that the legislature intended to punish first degree assault separately from robbery, but also concluded, “a case by case approach is required to determine whether first degree robbery and second degree assault are the same for double jeopardy purposes.” *Id.* at 780. This Court ruled that the crimes might not merge if they could be shown to have “an independent purpose or effect.” *Id.* In deciding *Freeman* this Court specifically cited an example where “the defendant struck a victim after completing a robbery,” because the assault did not forward the robbery. *Id.* at 779.

Although there appears to be no case that specifically addresses a misdemeanor assault and a first-degree robbery, the issue of force vs. assault has been addressed before. In *State v. Frohs* the defendant had been convicted of Unlawful Imprisonment and Assault in the Fourth Degree. *State v. Frohs*, 83 Wn.App. 803 at 804, 924 P.2d 384 (1996). The defendant appealed his convictions for both crimes, claiming that the two charges should have merged. *Id.* Division I of the Court of Appeals disagreed, noting that none of the three methods of accomplishing

unlawful imprisonment, which includes the use of physical force, required proof of committing an assault. *Id.* at 813-14. *Frohs* was cited with approval in *Freeman*. *See Freeman* at 779.

In this case Ramirez committed a battery upon Mr. Morales and Mr. Leiva, as opposed to an attempted battery or common-law assault, both of which constitute uses of force commonly used to elevate thefts to robberies. *See e.g. State v. Kier*, 164 Wn.2d 798, 803, 194 P.3d 212, 213 (2008) (threatened use of a shotgun to force a person out of a car the defendant subsequently stole results in second degree assault and first degree robbery charges to merge.)

Similarly, although bodily injury elevates a second-degree robbery to a first-degree robbery,⁹ fourth-degree assault does not require the infliction of bodily injury. *See RCW 9A.36.041(1)*. Therefore, the crimes do not necessarily merge.

In this case the trial court specifically addressed the robbery and assault deciding to run the misdemeanor assault charges consecutive to the robbery charges. The court said, “So, I am doing that because you found out you couldn't get anything on your robbery, you just kept beating on him rather than leaving.” RP 7/29/2016 at 14.

⁹ *See RCW 9A.56.200(1)(iii)*.

In this case, after using force to take a phone from Mr. Morales, and failing to take anything from Mr. Leiva, Ramirez (and Russell) beat them up. The assault was more than a use of force, like the display of a weapon or a threat – it was a battery.

In the end, it is no deviation from established case law that an assault might not merge with a robbery. Ramirez again just wishes to reargue the facts of his case. For that reason, this Court should *deny* his Petition for discretionary review and allow the Court of Appeals' decision to stand.

F. CONCLUSION

Ramirez and Galeana's one shared issue is easily resolved by reviewing the attached copies of the admitted exhibits Appendix A. They contain columns and rows of numbers and text messages, all created before the phone was sent to Utah. The Petitioners were not deprived of their right to confront anyone. The cell phone examiner was not a "witness against" or a "witness" at all, because he made no statements admitted into evidence. Detective Cox was the "witness against" them, and they confronted him at trial.

As for the remainder of Ramirez' issues, they present the same factual arguments rejected by the Court of Appeals. There is no split of opinion, no conflicts with existing cases, and no significant questions of law. Ramirez is simply trying to argue that the facts support his argument in yet another court, after those arguments failed in the trial court and the Court of Appeals, below. He fails to establish how his case falls within RAP 13.4.

For those reasons, the State asks this Court to DENY Ramirez and Galeana's Petitions for Discretionary Review.

DATED this 30th day of May, 2019.

Respectfully Submitted,

BY: 

JASON F. WALKER
Chief Criminal Deputy
WSBA # 44358

JFW /

APPENDIX A



COMPUTER CRIME INSTITUTE
OF
DIXIE STATE UNIVERSITY




Summary

UFED Physical Analyzer version	4.4.0.81
Version type	
Time zone settings (UTC)	Original UTC value
Examiner name	wrm

Device Information

#	Name	Value	Deleted
1	Android Fingerprint	motorola/falcon_verizon/falcon_cdma:4.4.4/KXB21.14-L1.41/42:user/release-keys	
2	Android Id	92f5f3bc1873c298	
3	Bluetooth device name	XT1028	
4	Bluetooth MAC Address	14:1A:A3:C7:59:29	
5	Country	US	
6	DeviceInfoDetectedPhoneModel	XT1028	
7	DeviceInfoDetectedPhoneVendor	motorola	
8	DeviceInfoOSVersion	4.4.4	
9	Hotspot Password	c4e498a3d862	
10	Language	en	
11	Mock Locations Allowed	False	
12	Phone Activation Time	10/24/2015 7:20:46 PM(UTC+0)	
13	Time Zone	y2L3HRFOZ8zuOGBjUh-	Yes
14	Time Zone	America/Phoenix	
15	Time Zone	America/Los_Angeles	Yes

Image Hash Details (1)

 No reference hash information is available for this project.		
#	Name	Info
1	Image	Path EMMC_ROM1_00000000_200000000.bin Size (bytes) 7818182656

Plugins

#	Name	Author	Version
1	MBRGeneric Parses a Master Boot Record to generate a memory range for each partition listed in the MBR table	Cellebrite	2.0
2	AndroidMD Parse the metadata for Android dumps	Cellebrite	2.0
3	GUIDPartitionTable Parses the GUID partition Table (GPT) to extract FS Partitions	Cellebrite	2.0
4	Android Disk Encryption Remover Enable decoding of a variety of encrypted Android phones using a given password	Cellebrite	2.0
5	ExtX ID Identifies ExtX partitions	Cellebrite	2.0
6	ExtXNative Decodes Ext 2, 3 and 4 File Systems	Cellebrite	2.0
7	Yaffs2 Parses Yaffs2 dump (considers all Yaffs2ExtendedTags properties)	Cellebrite	2.0
8	UBIFS Decodes UbiFS	Cellebrite	2.0
9	SmartFAT Decodes FAT 12, 16 and 32 (File Allocation Table file system)	Cellebrite	2.0
10	AndroidFSG Decodes the FSG partition in Android devices	Cellebrite	2.0
11	F2FS Decodes F2FS filesystem	Cellebrite	2.0
12	Android Databases Decodes user-data and 3rd party application databases for Android devices	Cellebrite	2.0
13	AndroidUnlockPattern Decodes Android Unlock pattern	Cellebrite	2.0
14	AndroidUnlockPassword Decrypts the numeric lock password for Android devices	Cellebrite	2.0
15	Garbage Cleaner		
16	DataFilesHandler Tags data files according to extensions and file signatures	Cellebrite	2.0
17	ContactsCrossReference Cross references the phone numbers in a device's contacts with the numbers in SMS messages and Calls. Will fill in the Name field of calls and SMS if there's a match.	Cellebrite	2.0
18	Analytics Generates the Analytics section information	Cellebrite	2.0

Contents

Type	Included in report	Total
Calendar	9 (1 Deleted)	9 (1 Deleted)
● snrussell.89@gmail.com	9 (1 Deleted)	9 (1 Deleted)
Call Log	578 (78 Deleted)	578 (78 Deleted)
Incoming	142 (20 Deleted)	142 (20 Deleted)
● Uncategorized	142 (20 Deleted)	142 (20 Deleted)
Missed	48	48
● Uncategorized	48	48
Outgoing	357 (27 Deleted)	357 (27 Deleted)
● Uncategorized	357 (27 Deleted)	357 (27 Deleted)
Unknown	31 (31 Deleted)	31 (31 Deleted)
● Uncategorized	31 (31 Deleted)	31 (31 Deleted)
Chats	98 (39 Deleted)	98 (39 Deleted)
● Facebook	38 (6 Deleted)	38 (6 Deleted)
● Facebook Messenger	48 (21 Deleted)	48 (21 Deleted)
● Kik	2 (2 Deleted)	2 (2 Deleted)
● WhatsApp	10 (10 Deleted)	10 (10 Deleted)
Contacts	494 (12 Deleted)	494 (12 Deleted)
Uncategorized	70 (1 Deleted)	70 (1 Deleted)
● Uncategorized	70 (1 Deleted)	70 (1 Deleted)
Facebook	345 (9 Deleted)	345 (9 Deleted)
● Uncategorized	345 (9 Deleted)	345 (9 Deleted)
Facebook Messenger	77 (2 Deleted)	77 (2 Deleted)
● Uncategorized	77 (2 Deleted)	77 (2 Deleted)
Google Drive	2	2
● Uncategorized	2	2
Cookies	14	14
Emails	50 (29 Deleted)	50 (29 Deleted)
Uncategorized	29 (29 Deleted)	29 (29 Deleted)
● Uncategorized	29 (29 Deleted)	29 (29 Deleted)
snrussell.89@gmail.com	3	3
● Inbox	3	3
snrussell030489@gmail.com	18	18
● Inbox	18	18
Installed Applications	150 (27 Deleted)	150 (27 Deleted)
Locations	6	6
● Media Locations	1	1
● Waze Recents	5	5
MMS Messages	44 (13 Deleted)	44 (13 Deleted)
Uncategorized	13 (13 Deleted)	13 (13 Deleted)
● Uncategorized	13 (13 Deleted)	13 (13 Deleted)
Inbox	26	26
● Uncategorized	26	26
Outbox	1	1
● Uncategorized	1	1
Sent	4	4
● Uncategorized	4	4
Passwords	33	33
Powering Events	1 (1 Deleted)	1 (1 Deleted)
Searched Items	118 (12 Deleted)	118 (12 Deleted)
● Play Market	25	25
● Youtube Application	93 (12 Deleted)	93 (12 Deleted)
SMS Messages	5034 (1784 Deleted)	5034 (1784 Deleted)
Drafts	10 (9 Deleted)	10 (9 Deleted)

● Uncategorized	10	(9 Deleted)	10	(9 Deleted)
Inbox	2740	(1045 Deleted)	2740	(1045 Deleted)
● Uncategorized	2740	(1045 Deleted)	2740	(1045 Deleted)
Outbox	7	(1 Deleted)	7	(1 Deleted)
● Uncategorized	7	(1 Deleted)	7	(1 Deleted)
Sent	1873	(325 Deleted)	1873	(325 Deleted)
● Uncategorized	1873	(325 Deleted)	1873	(325 Deleted)
Unknown	404	(404 Deleted)	404	(404 Deleted)
● Uncategorized	404	(404 Deleted)	404	(404 Deleted)
Timeline	7277	(1395 Deleted)	7277	(1395 Deleted)
User Accounts	17		17	
User Dictionary	7		7	
Wireless Networks	53		53	
Data Files	14132	(10146 Deleted)	14132	(10146 Deleted)
● Applications	1990	(524 Deleted)	1990	(524 Deleted)
● Audio	160		160	
● Configurations	369	(306 Deleted)	369	(306 Deleted)
● Databases	577	(105 Deleted)	577	(105 Deleted)
● Documents	4		4	
● Text	10933	(9172 Deleted)	10933	(9172 Deleted)
● Videos	99	(39 Deleted)	99	(39 Deleted)
Activity Analytics	747		747	
Analytics Emails	33		33	
● snrussell030489@gmail.com	5		5	
● snrussell.89@gmail.com	5		5	
● Uncategorized	23		23	
Analytics Phones	226		226	
WhatsApp	10		10	

Calendar (9)

snrussell.89@gmail.com (9)

#	Time	Calendar Entry	Event information	Deleted
1	Start Time: 7/9/2015 12:00:00 AM(UTC+0) End Time: 7/9/2015 1:00:00 AM(UTC+0)	Subject: I am Name e I gaïqqTve it will pork chops. allna. and ae and on a q Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:	Yes
2	Start Time: 6/18/2015 11:00:00 PM(UTC+0) End Time: 6/19/2015 12:00:00 AM(UTC+0)	Subject: Worked 9 hours Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:	
3	Start Time: 6/17/2015 11:00:00 PM(UTC+0) End Time: 6/18/2015 12:00:00 AM(UTC+0)	Subject: Worked 4 hours Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:	
4	Start Time: 6/16/2015 7:00:00 AM(UTC+0) End Time: 6/16/2015 8:00:00 AM(UTC+0)	Subject: Worked 9 hrs Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:	

5	Start Time: 6/15/2015 8:00:00 AM(UTC+0) End Time: 6/15/2015 9:00:00 AM(UTC+0)	Subject: Worked 8 hrs Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:
6	Start Time: 6/11/2015 11:00:00 PM(UTC+0) End Time: 6/12/2015 12:00:00 AM(UTC+0)	Subject: Worked 8 hours Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:
7	Start Time: 6/10/2015 2:00:00 PM(UTC+0) End Time: 6/10/2015 3:00:00 PM(UTC+0)	Subject: Worked 9 hrs Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:
8	Start Time: 6/9/2015 3:00:00 PM(UTC+0) End Time: 6/9/2015 4:00:00 PM(UTC+0)	Subject: Worked 9 hrs Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:
9	Start Time: 6/8/2015 8:00:00 AM(UTC+0) End Time: 6/8/2015 9:00:00 AM(UTC+0)	Subject: Worked 8 hrs Attendees: Location: Details:	Category: snrussell.89@gmail.com Reminder: Priority: Unknown Status: Unknown Class: Normal Repeat Day: None Repeat Rule: None Repeat Interval: 0 Repeat Until:

Call Log (578)

 * These details are cross-referenced from this device's contacts

Incoming (142)

Uncategorized (142)

#	Parties	Timestamp	Duration	Country code	Network code	Network Name	Video call	Deleted
1	From: 3605900561 Madre	10/25/2015 1:18:12 AM(UTC+0)	00:02:40					
2	From: 3602687218	10/24/2015 8:03:35 PM(UTC+0)	00:00:18					
3	From: 3605280637	10/24/2015 7:25:16 PM(UTC+0)	00:11:38					
4	From: 3605280637	10/24/2015 6:52:25 PM(UTC+0)	00:01:28					
5	From: 3605904151 Chamutt	10/24/2015 6:50:27 PM(UTC+0)	00:00:58					
6	From: 3605007309 Love	10/24/2015 6:10:46 PM(UTC+0)	00:00:47					
7	From: 3607533066 Kevin Johnson	10/24/2015 4:17:06 PM(UTC+0)	00:00:59					
8	From: 3607890331	10/23/2015 10:08:36 PM(UTC+0)	00:00:27					
9	From: 3607890331	10/23/2015 9:34:23 PM(UTC+0)	00:00:12					
10	From: 3605900561 Madre	10/23/2015 4:52:14 AM(UTC+0)	00:00:01					
11	From: 4253195290 Glo Bugz	10/22/2015 11:28:44 PM(UTC+0)	00:01:00					
12	From: 3605810288 Silent	10/22/2015 5:20:46 PM(UTC+0)	00:01:15					
13	From: 3605904151 Chamutt	10/21/2015 12:16:45 AM(UTC+0)	00:12:26					
14	From: 3605900561 Madre	10/18/2015 8:57:20 PM(UTC+0)	00:02:50					

Sent (1873)

Uncategorized (1873)

#	Party	Time	All timestamps	Status	Message	Deleted
1	To (360) 500-7309 Love*	10/25/2015 4:05:20 AM(UTC+0)	Network: 10/25/2015 4:05:20 AM(UTC+0)	Sent	Love u want something to grub	
2	To (360) 581-0288 Silent*	10/25/2015 2:16:24 AM(UTC+0)	Network: 10/25/2015 2:16:24 AM(UTC+0)	Sent	Come drink a beer	
3	To (360) 581-0288 Silent*	10/25/2015 2:14:18 AM(UTC+0)	Network: 10/25/2015 2:14:18 AM(UTC+0)	Sent	Wats good	
4	To (360) 581-0288 Silent*	10/25/2015 2:14:11 AM(UTC+0)	Network: 10/25/2015 2:14:11 AM(UTC+0)	Sent	Drinking at Normans	
5	To (360) 590-0561 Madre*	10/25/2015 1:35:25 AM(UTC+0)	Network: 10/25/2015 1:35:25 AM(UTC+0)	Sent	We're u gonna stop by	
6	To (360) 500-7309 Love*	10/24/2015 9:44:41 PM(UTC+0)	Network: 10/24/2015 9:44:41 PM(UTC+0)	Sent	Not sure it yet he don't know either he said he was coming again Monday	
7	To (360) 500-7309 Love*	10/24/2015 9:42:17 PM(UTC+0)	Network: 10/24/2015 9:42:17 PM(UTC+0)	Sent	Love u butthead	
8	To (360) 500-7309 Love*	10/24/2015 9:40:47 PM(UTC+0)	Network: 10/24/2015 9:40:47 PM(UTC+0)	Sent	Well come first and we can go together k l just got pizza at 711	
9	To (360) 581-0288 Silent*	10/24/2015 8:02:45 PM(UTC+0)	Network: 10/24/2015 8:02:45 PM(UTC+0)	Sent	Where u guys at	
10	To (360) 500-7309 Love*	10/24/2015 7:12:23 PM(UTC+0)	Network: 10/24/2015 7:12:23 PM(UTC+0)	Sent	Well wat time u off	
11	To (360) 500-7309 Love*	10/24/2015 7:12:13 PM(UTC+0)	Network: 10/24/2015 7:12:13 PM(UTC+0)	Sent	K love this sucks I'm bout to go and get something to eat with the kids there all hungry	
12	To (360) 500-7309 Love*	10/24/2015 7:09:38 PM(UTC+0)	Network: 10/24/2015 7:09:38 PM(UTC+0)	Sent		
13	To (360) 500-7309 Love*	10/24/2015 7:09:33 PM(UTC+0)	Network: 10/24/2015 7:09:33 PM(UTC+0)	Sent	Love sorry for being asshole I'm just stressed hope u have a good day love u	
14	To (360) 581-0288 Silent*	10/24/2015 6:58:42 PM(UTC+0)	Network: 10/24/2015 6:58:42 PM(UTC+0)	Sent	3605904151	
15	To (360) 581-0288 Silent*	10/24/2015 6:54:29 PM(UTC+0)	Network: 10/24/2015 6:54:29 PM(UTC+0)	Sent	Hey Rosie said if u could call her or txt her when u get there so she can open the door because Tricia is still passed out	
16	To (360) 500-7309 Love*	10/24/2015 6:29:20 PM(UTC+0)	Network: 10/24/2015 6:29:20 PM(UTC+0)	Sent	Just come bonehead god waste ur whole fuckin lunch	
17	To (360) 500-7309 Love*	10/24/2015 6:10:02 PM(UTC+0)	Network: 10/24/2015 6:10:02 PM(UTC+0)	Sent	Bring some mcchickens Love	
18	To (360) 500-7309 Love*	10/24/2015 6:07:32 PM(UTC+0)	Network: 10/24/2015 6:07:32 PM(UTC+0)	Sent	When u on lunch love	
19	To (360) 581-0288 Silent*	10/24/2015 5:28:50 PM(UTC+0)	Network: 10/24/2015 5:28:50 PM(UTC+0)	Sent	Yup	
20	To (360) 581-0288 Silent*	10/24/2015 5:26:44 PM(UTC+0)	Network: 10/24/2015 5:26:44 PM(UTC+0)	Sent	Aight then we'll idk he said he'd be here though maybe he can give us a outline of wat he wants us to say or something	
21	To (360) 581-0288 Silent*	10/24/2015 5:21:34 PM(UTC+0)	Network: 10/24/2015 5:21:34 PM(UTC+0)	Sent	He said he would be here at 1130 or 1200	
22	To (360) 581-0288 Silent*	10/24/2015 4:20:46 PM(UTC+0)	Network: 10/24/2015 4:20:46 PM(UTC+0)	Sent	Wat up	

Inbox (2740)

Uncategorized (2740)

#	Party	Time	All timestamps	Status	Message	Deleted
1	From 3605815304 Cristina*	10/25/2015 4:07:58 AM(UTC+0)	Network: 10/25/2015 4:07:58 AM(UTC+0)	Unread	She yea want something eat Sadeyes	Yes
2	From 3605815304 Cristina*	10/25/2015 4:07:41 AM(UTC+0)	Network: 10/25/2015 4:07:41 AM(UTC+0)	Unread	She yea want something eat Sadeyes	
3	From 3605815304 Cristina*	10/25/2015 3:52:59 AM(UTC+0)	Network: 10/25/2015 3:52:59 AM(UTC+0)	Read	Plz bring mc donlds plssssss Sadeyes	Yes
4	From 3605815304 Cristina*	10/25/2015 3:52:45 AM(UTC+0)	Network: 10/25/2015 3:52:45 AM(UTC+0)	Read	Plz bring mc donlds plssssss Sadeyes	
5	From 3605810288 Silent*	10/25/2015 2:37:35 AM(UTC+0)	Network: 10/25/2015 2:37:35 AM(UTC+0)	Read	k I'll stop by in a min bro	Yes
6	From 3605810288 Silent*	10/25/2015 2:37:27 AM(UTC+0)	Network: 10/25/2015 2:37:27 AM(UTC+0)	Read	k I'll stop by in a min bro	
7	From 3605810288 Silent*	10/25/2015 2:15:35 AM(UTC+0)	Network: 10/25/2015 2:15:35 AM(UTC+0)	Read	nada just doing laundry at my mom's	Yes
8	From 3605810288 Silent*	10/25/2015 2:15:21 AM(UTC+0)	Network: 10/25/2015 2:15:21 AM(UTC+0)	Read	nada just doing laundry at my mom's	
9	From 3605810288 Silent*	10/25/2015 2:13:47 AM(UTC+0)	Network: 10/25/2015 2:13:47 AM(UTC+0)	Read	what you up 2?	Yes
10	From 3605810288 Silent*	10/25/2015 2:13:39 AM(UTC+0)	Network: 10/25/2015 2:13:39 AM(UTC+0)	Read	what you up 2?	
11	From 3605007309 Love*	10/24/2015 9:43:47 PM(UTC+0)	Network: 10/24/2015 9:43:47 PM(UTC+0)	Read	Me too. How did it go	Yes
12	From 3605007309 Love*	10/24/2015 9:43:39 PM(UTC+0)	Network: 10/24/2015 9:43:39 PM(UTC+0)	Read	Me too. How did it go	
13	From 3605007309 Love*	10/24/2015 9:41:44 PM(UTC+0)	Network: 10/24/2015 9:41:44 PM(UTC+0)	Read	K	Yes
14	From 3605007309 Love*	10/24/2015 9:41:35 PM(UTC+0)	Network: 10/24/2015 9:41:35 PM(UTC+0)	Read	K	
15	From 3605007309 Love*	10/24/2015 9:39:51 PM(UTC+0)	Network: 10/24/2015 9:39:51 PM(UTC+0)	Read	Im off at 330 what u get to eat ?? If u didnt let me know so i can get sometin for dinner i wanna make sometin	Yes
16	From 3605007309 Love*	10/24/2015 9:39:43 PM(UTC+0)	Network: 10/24/2015 9:39:43 PM(UTC+0)	Read	Im off at 330 what u get to eat ?? If u didnt let me know so i can get sometin for dinner i wanna make sometin	
17	From 3605810288 Silent*	10/24/2015 8:25:01 PM(UTC+0)	Network: 10/24/2015 8:25:01 PM(UTC+0)	Unread	on our way	Yes
18	From 3605810288 Silent*	10/24/2015 8:24:54 PM(UTC+0)	Network: 10/24/2015 8:24:54 PM(UTC+0)	Read	on our way	
19	From 3605810288 Silent*	10/24/2015 8:11:37 PM(UTC+0)	Network: 10/24/2015 8:11:37 PM(UTC+0)	Read	I been waiting on tricia	Yes
20	From 3605810288 Silent*	10/24/2015 8:11:29 PM(UTC+0)	Network: 10/24/2015 8:11:29 PM(UTC+0)	Read	I been waiting on tricia	
21	From 3605810288 Silent*	10/24/2015 8:03:57 PM(UTC+0)	Network: 10/24/2015 8:03:57 PM(UTC+0)	Read	they were both sleeping I have to go back and pick her up	Yes
22	From 3605810288 Silent*	10/24/2015 8:03:55 PM(UTC+0)	Network: 10/24/2015 8:03:55 PM(UTC+0)	Read	they were both sleeping I have to go back and pick her up	

219 8	Instant Messages			6/21/2015 5:47:40 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
219 9	Instant Messages			6/21/2015 5:47:42 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
220 0	Instant Messages			6/21/2015 5:47:42 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
220 1	Instant Messages			6/21/2015 5:48:15 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
220 2	Instant Messages			6/21/2015 5:48:15 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
220 3	Instant Messages			6/21/2015 5:48:30 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
220 4	Instant Messages			6/21/2015 5:48:30 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
220 5	Instant Messages			6/21/2015 5:49:25 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
220 6	Instant Messages			6/21/2015 5:49:25 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
220 7	Instant Messages			6/21/2015 5:49:50 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
220 8	Instant Messages			6/21/2015 5:49:50 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
220 9	Instant Messages			6/21/2015 5:51:09 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
221 0	Instant Messages			6/21/2015 5:51:09 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
221 1	Instant Messages			6/21/2015 5:52:59 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
221 2	Instant Messages			6/21/2015 5:52:59 PM(UTC+0)	From: 100002188692808 Ilsit'sa Martha Boyer	[REDACTED]	
221 3	Instant Messages			6/21/2015 5:53:45 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
221 4	Instant Messages			6/21/2015 5:53:45 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
221 5	SMS Messages	From		6/21/2015 5:55:48 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
221 6	SMS Messages	From		6/21/2015 5:55:56 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
221 7	SMS Messages	To		6/21/2015 5:56:28 PM(UTC+0)	To: (360) 310-3008 Koonta	[REDACTED]	Yes
221 8	SMS Messages	From		6/21/2015 6:03:18 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
221 9	SMS Messages	From		6/21/2015 6:03:19 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
222 0	SMS Messages	To		6/21/2015 6:04:00 PM(UTC+0)	To: (360) 310-3008 Koonta	[REDACTED]	Yes
222 1	SMS Messages	From		6/21/2015 6:11:41 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
222 2	SMS Messages	From		6/21/2015 6:11:44 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
222 3	Instant Messages			6/21/2015 8:07:57 PM(UTC+0)	From: 100009024418780 Rigo Rivera	[REDACTED]	
222 4	Instant Messages			6/21/2015 8:08:14 PM(UTC+0)	From: 100001352087107 Steven Russell	[REDACTED]	
222 5	Instant Messages			6/21/2015 8:08:15 PM(UTC+0)	From: 100009024418780 Rigo Rivera	[REDACTED]	
222 6	SMS Messages	From		6/22/2015 4:49:54 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	
222 7	SMS Messages	From		6/22/2015 4:50:01 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	Yes
222 8	SMS Messages	To		6/22/2015 4:51:01 AM(UTC+0)	To: (360) 581-0288 Silent	[REDACTED]	
222 9	SMS Messages	From		6/22/2015 4:52:34 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	
223 0	SMS Messages	From		6/22/2015 4:52:40 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	Yes
223 1	SMS Messages	To		6/22/2015 5:19:41 AM(UTC+0)	To: (360) 581-0288 Silent	[REDACTED]	
223 2	SMS Messages	From		6/22/2015 5:30:15 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	
223 3	SMS Messages	From		6/22/2015 5:30:28 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	Yes
223 4	SMS Messages	From		6/22/2015 5:30:42 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	
223 5	SMS Messages	From		6/22/2015 5:30:49 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	Yes
223 6	SMS Messages	From		6/22/2015 5:30:59 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	
223 7	SMS Messages	From		6/22/2015 5:31:03 AM(UTC+0)	From: 3605810288 Silent	[REDACTED]	Yes
223 8	SMS Messages	To		6/22/2015 5:31:11 AM(UTC+0)	To: (360) 581-0288 Silent	[REDACTED]	
223 9	Searched Items			6/22/2015 5:31:52 AM(UTC+0)		[REDACTED]	
224 0	SMS Messages	From		6/22/2015 1:41:41 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
224 1	SMS Messages	From		6/22/2015 1:41:49 PM(UTC+0)	From: 3603103008 Koonta	[REDACTED]	Yes
224 2	SMS Messages	To		6/22/2015 2:21:06 PM(UTC+0)	To: (360) 310-3008 Koonta	[REDACTED]	Yes

6/21/2015 5:44:43 PM(UTC+0), 100001352087107 (Steven Russell)

6/21/2015 5:45:48 PM(UTC+0), 100001352087107 (Steven Russell)

6/21/2015 5:47:10 PM(UTC+0), 100002188892808 (Isit'sa Martha Boyer)

6/21/2015 5:47:40 PM(UTC+0), 100001352087107 (Steven Russell)

6/21/2015 5:47:42 PM(UTC+0), 100002188892808 (Isit'sa Martha Boyer)

6/21/2015 5:48:15 PM(UTC+0), 100001352087107 (Steven Russell)

22

Participants:
100009024418780

Rigo Rivera

100001352087107

Steven Russell

Identifier: ONE_TO_ONE:100009024418780:100001352087107
Source: Facebook Messenger
Body file: chat-49.txt

Start Time: 6/21/2015 8:07:57 PM(UTC+0)
Last Activity: 10/12/2015 11:03:01 PM(UTC+0)
Number of attachments: 0

6/21/2015 8:07:57 PM(UTC+0), 100009024418780 (Rigo Rivera)

6/21/2015 8:08:14 PM(UTC+0), 100001352087107 (Steven Russell)

6/21/2015 8:08:15 PM(UTC+0), 100009024418780 (Rigo Rivera)

7/14/2015 11:57:34 PM(UTC+0), 100009024418780 (Rigo Rivera)

7/15/2015 12:17:08 AM(UTC+0), 100001352087107 (Steven Russell)

7/15/2015 2:28:30 AM(UTC+0), 100009024418780 (Rigo Rivera)

10/12/2015 7:32:57 PM(UTC+0), 100001352087107 (Steven Russell)

10/12/2015 10:26:38 PM(UTC+0), 100009024418780 (Rigo Rivera)

10/12/2015 10:28:09 PM(UTC+0), 100001352087107 (Steven Russell)

10/12/2015 10:37:37 PM(UTC+0), 100009024418780 (Rigo Rivera)

23

Participants:
100001352087107

Steven Russell

100001552537494

Daniel Galeana

Identifier: ONE_TO_ONE:100001552537494:100001352087107
Source: Facebook Messenger
Body file: chat-51.txt

Start Time: 7/8/2015 4:58:34 PM(UTC+0)
Last Activity: 8/4/2015 9:22:44 PM(UTC+0)
Number of attachments: 0

7/8/2015 4:58:34 PM(UTC+0), 100001552537494 (Daniel Galeana)

7/8/2015 4:59:38 PM(UTC+0), 100001352087107 (Steven Russell)

7/8/2015 5:00:49 PM(UTC+0), 100001552537494 (Daniel Galeana)

GRAYS HARBOR COUNTY PROSECUTING ATTORNEY'S OFFICE

May 30, 2019 - 8:14 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97008-4
Appellate Court Case Title: State of Washington v. Daniel Galeana Ramirez, Alejandro Ramirez and Steven Russell
Superior Court Case Number: 15-1-00467-3

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- stephanie@newbrylaw.com
- tom@washapp.org
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